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JUN 08 2009

OFFICE OF PETITIONS

In re Application of Harris Jr. et al. :
Application No. 10/709,903 : Decision on Petition
Filing Date: June 4, 2004 :
Attorney Docket No. HARRIS-1 :
:

This is a decision on the petition under 37 CFR 1.137(b), filed April 7, 2009, to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed April 17, 2007, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on July 18, 2007. A Notice of Abandonment was mailed on December 13, 2007.

The instant petition requests revival of the application.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed,
- (2) The petition fee,
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) A terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Petitioner has failed to satisfy item (3) above.

37 CFR 1.137(b) requires a statement that “the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to [37 CFR 1.137(b)] was unintentional.” The Office often receives unintentional statements that vary from the language required by 37 CFR 1.137(b)(3). For example, in this case, petitioner states, “The delay in filing the response was unintentional.”

In most cases, the Office conditionally grants petitions that include incorrect language. The Office issues a decision stating:

- (1) The statement in the petition does not comply with 37 CFR 1.137(b)(3),
- (2) The statement in the petition will be construed as a statement that “the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional”, and
- (3) Petitioner must notify the Office if the interpretation in (2) above is incorrect.

In this case, the petition was filed more than 20 months after the application became abandoned and more than 15 months after the Office mailed a Notice of Abandonment. Therefore, the Office is requiring a statement that complies with 37 CFR 1.137(b)(3).

Any request for reconsideration should include the following statement,

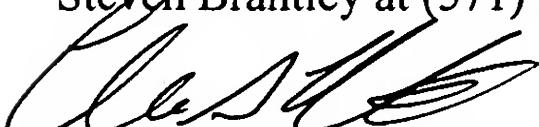
The entire delay in filing the required reply from the due date for the reply until the filing of this petition pursuant to 37 CFR 1.137(b) was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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